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THE NEUTRALITY RULES ADOPTED BY BRAZIL

BY HIS EXCELLENCY, THE BRAZILIAN AMBASSADOR,
SENHOR DOM DOMICIO DA GAMA.

I crave your indulgence for a brief presentation of the rules adopted to define, secure and maintain the neutrality of Brazil in the present European war. I will not undertake a detailed discussion of them; I only desire to call your attention to them as a contribution towards the maintenance of friendly relations between belligerents and a country not involved in the war. The observance of these rules, which was announced at the beginning of the war, seems to have been approved by the belligerents, and particularly by one of them, which has gone so far as to propose that they be taken as an example elsewhere. But the fact that the rules wisely adopted by Brazil in matters of neutrality could not be followed by others is another proof that international problems have to be treated according to internal conditions, and their solution subordinated to national conveniences. "For geographical reasons" was a rather elegant phrase lately used in the declination of official invitations to coöperate in defensive actions of government. This is a new proof of the fact that, in some cases and particularly in those involving responsibility, governments may feel safer in acting alone than in finding themselves in good company.

I am prepared to admit that reflections such as these may serve to cool the generous enthusiasm of the honest preachers of international solidarity; nor should I wish to appear to be sarcastic as I credit philanthropy with taking the initiative in the improvement of international relations. And I also recognize that optimism is at the basis of every constructive work, and should be an altogether good thing. But we must also know that virtue among nations has not reached such a pitch as to justify the belief in an international society of nations, ruled by the same restraining, virtuous, moral principles that preside over the relations of individuals living in society. We are well acquainted with lessons of history which not only sadden our hearts and darken our minds with the tragedies of ambition, both in individuals and in nations, but which

also teach us that optimism, especially in the sense of undue self-confidence, may hurry us on to grave catastrophes. We are all thinking of the present war—this war, that none of us would like to be responsible for; this, to the cool-minded man, suicidal war, was rendered possible by optimism in that sense. Some good people, honestly believing that they had grievances to redress, felt that all they had to do was to start and strike at those who stood in the way, and that they would get their due for being brave and strong and having confidence in themselves. And they went out and struck and have been striking ever since, but cannot yet say when the fighting will cease, because there are others in the way, equally brave and strong and self-confident. The lesson of this tragic mistake cannot destroy the hope that is immortal in the heart of men, hope for better times when peace will rule the world; but it may warn us against the dangers of miscalculation through optimism and, if some good may arise from so much evil, it will come through fear—which in many respects is the beginning of wisdom—fear that we are not safe, that we are not sufficiently protected by our overestimated and over-trusted civilization.

Rules of neutrality appear as a consequence of the salutary fear of entanglements and complications with other peoples' troubles. These rules are rather precarious, being based on precedents or, more exactly, upon the respect of the belligerents, a respect that may naturally diminish as it comes to conflict with the needs of war. When the rules are violated, protests are promptly made, explanations and excuses follow, for the sake of international good feeling; and the history of violations of neutrality is augmented by another page on which is specially recorded yet another incident connected with the solving by arms of the conflicts between nations.

For this, among other reasons, neutrality suffers a certain disparagement in the minds of plain people, not to say of belligerents. Nor are we neutrals credited with absolute impartiality before the struggle, and, although "the state of neutrality avoids all consideration of the merits of the contest," it cannot go so far as to sincerely "recognize the cause of both parties to the contest as just," unless a man has arrived at that degree of cynicism in which all human ambitions and strifes appear as mere foolishness. From the average man, even from professors of international law, hardly can we

expect such unearthly detachment as to preclude sympathy in the decisions of absolute justice.

There is nothing to prevent us as individuals from making a choice. We are free to have preferences, to take sides, if only morally, in a contest of such magnitude and far-reaching consequences. This is our personal right and almost bounden duty. Where political reasons intervene it is in not showing our preferences, in expressing opinions and sentiments that might carry a moral weight in favor of one of the contending parties; and such a reservedness, amounting to more than usual discretion and propriety in social relations, is not obtainable without much care and a real effort on the part of the governments.

Now, there seems to be no real reciprocity on the part of the belligerents for such a consideration from the neutral. Enemies are sometimes shown courtesies that are omitted with friends that are neutral, and this is perhaps because they are neutral, that is to say, friendly to the other party also. If it is true that the friends of our friends are not always our friends, the friends of our enemies may easily be found to be our enemies; or, at least they cannot be of the best we may have in matter of friends. Oh! it is a poor friendship,—the one which simply reads as the contrary of enmity. It goes by degrees and has restrictions and wears out at the first and lightest friction, as a label of no consequence upon a bottle of doubtful wine.

This is what we imagine belligerents feel about neutrality, if they do not really express themselves so clearly about it. And the mortification of being under suspicion is thus added to the worries and cares of the neutrals in their dealing with the special situation created by an international war; a situation which should prevent nations from armed conflicts, if the memory of past sufferings could appear as vivid in our mind at the critical moment; which at all events could be considerably improved if the interests of the neutrals were properly taken into consideration and their rights clearly defined and respected by belligerents. A movement in this sense was initiated last year by the governments represented at the Pan American Union. A committee of study was appointed, which has been working steadily and has already nearly completed its report, and the nations of our continent, taken by surprise and finding it difficult to legislate in time of war without affecting positions ac-

quired and advantages gained by one or other of the belligerents, prepare themselves to codify the rules of neutrality that may be adopted in common and will in future conflicts serve the interests of peace without interfering with the contest. I am not authorized to speak about this preliminary work, which has still to be submitted to the consideration of our governments, unless it is to say that it was conducted upon the most liberal principles. The Brazilian rules of neutrality given in full in the footnote¹ were among the elements that were considered by the sub-committee in charge of this codification. And from them, because so much has been said about the exportation of arms and ammunitions of war to belligerents, I select two articles which read:

ART. 4th. The exportation of arms and ammunitions of war from Brazil to any port of the belligerent nations under the Brazilian flag, or that of any other nation, is absolutely forbidden.

ART. 5th. The states of the Union and their agents are not permitted to export or to participate in exporting any kind of war material for any of the belligerents, severally or collectively.

These rules are not new. The first of them was promulgated by the Minister of Foreign Affairs of Brazil on April 29, 1896, on the occasion of the war between the United States and Spain. The second is an extension of the first, and affirms the authority of the federal government on an international matter.

Lately a circular dispatch dated February 22 of this year was sent by the Minister of Foreign Affairs to the Brazilian Embassies and Legations, saying that:

According to our law, that follows in this the principles of commercial law common to all civilized nations, the commercial associations established and operating in the country and registered in the Brazilian boards of trade are considered as Brazilian irrespective of the nationality of their individual members. Although this may bring as a consequence a difference between the juridic personality of these societies and that of their members, the Brazilian government will not give its support to the claims made by commercial societies composed of foreign members, against acts of any of the belligerent nations, until and when, having duly examined the facts and carefully considered the circumstances, it will be convinced; not only that the claim is absolutely well founded, but also that it is free from any political objects. It is the aim of the government of Brazil to see by this decision that a juridic principle true and useful in time of peace, may not be diverted from its moral purposes of tutelage and organization so as to cover acts not consistent with the neutrality that Brazil has so rigorously maintained. (Signed) Lauro Müller.

¹ For General Rules of Neutrality see following pages.

Everything points to the practical wisdom of these rules. They have proved satisfactory so far, but I am not aware of their being put to a test. It was not so long ago when the papers reported that reply of the commander of a British squadron to the captain of the enemy warship, who claimed the right of asylum in neutral waters: "I have to sink you first: diplomacy will settle the matter afterwards." Brazilian diplomacy has not been settling questions of violation of neutrality in our territorial waters.

GENERAL RULES OF NEUTRALITY

ART. 1st—National and foreign residents in the United States of Brazil must abstain from any participation in aid of the belligerents or any act that may be deemed hostile to one of the nations at war.

ART. 2nd—The belligerents are not allowed to promote in Brazil the enlistment of their nationals, or of Brazilian citizens, or of subjects of other nations, for service in their forces on land or sea.

ART. 3rd—The government of Brazil does not consent that privateers be armed and equipped in the ports of the Republic.

ART. 4th—The exportation of arms and ammunitions of war from Brazil to any port of the belligerent nations, under the Brazilian flag, or that of any other nation, is absolutely forbidden.

ART. 5th—The states of the Union and their agents are not permitted to export or to participate in exporting any kind of war material for any of the belligerents, severally or collectively.

ART. 6th—A belligerent is not permitted to have a naval base of operations against the enemy at any point in the littoral of Brazil or its territorial waters, not to have in said waters wireless telegraph stations to communicate with belligerent forces in the theatre of the war.

ART. 7th—In case the military operations or the sea-ports of any of the belligerents are situated at less than twelve days from the United States of Brazil, reckoning travel at twenty-three miles an hour, no warship of the other belligerent or belligerents will be allowed to stay in Brazilian ports, harbors or roadsteads longer than twenty-four hours, except in case of ships putting in on account of urgent need.

The case of urgent need justifies the staying of the warship or privateer at the port longer than twenty-four hours;

1. If the repairs needed to render the ship seaworthy cannot be made within that time;

2. In case of serious danger on account of stress of weather;

3. When threatened by some enemy craft cruising off the port of refuge.

These three circumstances will be taken into consideration by the government in granting a delay for the refugee ship.

ART. 8th—If the distance from the Brazilian port, harbor or roadstead of refuge to the next point of the littoral of the enemy is greater than twelve days'

sail, the duration of the stay of the refugee ship or ships of war in the Brazilian waters will be left to the determination of the government, acting according to circumstances.

ART. 9th—Regardless of the distance between the Brazilian ports and the principal field of military operations or between the Brazilian ports and those of one of the belligerent countries, privateers will not be allowed to stay in ports, harbors or territorial waters of Brazil longer than twenty-four hours, except in the three cases mentioned in Art. 7th.

ART. 10th—The rules established by Articles Nos. 7 and 8 for the limitation of the stay of ships in the ports, harbors and territorial waters of Brazil do not apply to ships of war occupied in scientific, religious or philanthropic missions, nor to hospital ships.

ART. 11th—Any act of war, including capture and the exercise of the right of visit, by a belligerent warship in territorial waters of Brazil constitutes a violation of the neutrality and offends the sovereignty of the Republic.

Besides due reparation, the government of the Republic will demand the release by the belligerent government or governments of the vessels captured, with their officers and crew, if such captured vessels are already beyond the jurisdictional water of Brazil and immediate repression of the abuse committed.

ART. 12th—Once war is declared, the federal government will prevent, by all means, the fitting out, equipping and arming of any vessel that may be suspected of intending to go privateering or otherwise engaging in hostilities against one of the belligerents. The government will be equally careful in preventing the sailing from the Brazilian territory of any vessel there adapted to be used as a warship in hostile operations.

ART. 13th—The belligerent warships are allowed to repair their damages in the ports and harbors of Brazil only to the extent of rendering them seaworthy, without in any wise augmenting their military power.

The Brazilian naval authorities will ascertain the nature and extent of the proper repairs, which shall be made as promptly as possible.

ART. 14th—The aforesaid ships may take supplies in Brazilian ports and harbors:

1. To make up their usual stock of food supplies as in time of peace;
2. To take fuel enough to reach their next home port or complete the filling of their coal-bunkers proper.

ART. 15th—The belligerent warships that take fuel in a Brazilian port will not be allowed to renew their supplies in the same or other Brazilian port before three months have elapsed since their next-previous supply.

ART. 16th—Belligerent ships are not allowed to increase their armament, military equipment or crews in the ports, harbors or territorial waters of Brazil. They may claim the services of the national pilots.

ART. 17th—The neutrality of Brazil is not affected by the mere passage through its territorial waters of belligerent warships and their prizes.

ART. 18th—If warships of two belligerents happen to be together in a Brazilian port or harbor, an interval of twenty-four hours shall elapse between the sailing of one of them and the sailing of her enemy, if both are steamers. If the first to sail is a sailing vessel and the next being an enemy is a steamer, three days' ad-

vance will be given to the first belligerent ship. Their time of sailing will be counted from their respective arrivals, exceptions being made for the cases in which a prolongation of stay may be granted. A belligerent ship of war cannot leave a Brazilian port before the departure of a merchant ship under an enemy flag, but must respect the aforesaid provisions concerning the intervals of departure between steamers and sailing vessels.

ART. 19th—If a belligerent warship having received due notice from the competent local authority does not leave the Brazilian port where her stay would be unlawful, the federal government will take the necessary measures to prevent her sailing during the war.

(a) The officer in command of a ship of war flying the flag of a nation having ratified the 13th convention of The Hague, October 17, 1907, or having adhered to it afterwards, is under obligation to facilitate the execution of those measures.

(b) If a commandant of a belligerent ship refuses to comply with the notice received, for some reason nonapplicable, or for lack of adhesion to that and other clauses of said convention of The Hague, the federal government will command the naval and military authorities of the Republic to use force to prevent the violation of Brazilian neutrality.

(c) A belligerent ship being detained in Brazil, her officers and crew shall be detained with her.

(d) The officers and men thus detained may have their quarters in another ship or in some place ashore, to be under the restrictive measures that are advisable, keeping aboard the warship the men necessary to her upkeep. The officers may have their freedom, under written pledge, on their word of honor, not to leave the place assigned to them in Brazilian territory without authorization from the minister of the navy.

ART. 20th—The captures made by a belligerent may only be brought to a Brazilian port in case of unseaworthiness, stress of weather, lack of fuel or food provisions, and also under the conditions provided hereinbelow in Article 21st.

The prize must depart as soon as the cause or causes of her arrival cease. Failing that departure, the Brazilian authority will notify the commander of the prize to leave at once, and, if not obeyed, will take the necessary measures to have the prize released with her officers and crew, and to intern the prize-crew placed on board by the captor.

Any prize entering a Brazilian port or harbor, except under the aforesaid four conditions, will be likewise released.

ART. 21st—Prizes may be admitted that are brought, under convoy or not, to a Brazilian port, to be placed under custody pending the decision of the competent prize-court. The prize may be sent by the local authority to some other Brazilian port. If she is convoyed by a warship, the officers and prize-crew put aboard by the captor may return to the warship. If she sails alone, the prize-crew put aboard by the captor is left at liberty.

ART. 22nd—Belligerent warships that are chased by the enemy, and, avoiding attack, seek refuge in a Brazilian port, will be detained there and disarmed. But they will be allowed to go if their officers in command take the pledge of not engaging themselves in war operations.

ART. 23rd—No prize will be sold in Brazil before the validity of her capture

is recognized by the competent court in the country of the captor. Nor is the captor allowed to dispose in Brazil of the goods in his possession as a result of the capture.

ART. 24th—From the officers in command of naval forces or warships calling at Brazilian ports for repairs, or supplies, a written declaration will be required that they will not capture merchant ships under their adversary's flag, even outside territorial waters of Brazil, if met between 30 degrees Long. W. Greenwich, the parallel of 4 degrees, 30 minutes N. and that of 30 degrees S., when these merchant ships have taken cargo in Brazilian ports or are bringing cargo to the same.

ART. 25th—Belligerents cannot receive in Brazilian ports goods sent directly to them in ships of any nation, since this would mean that the warships did not put in in a case of urgent need, but intended to cruise in these waters. To tolerate such an abuse would amount to allowing Brazilian ports to be used as a base of military operations.

ART. 26th—Belligerent warships admitted into the ports and harbors of Brazil shall remain in the places to them assigned by the local authorities, perfectly quiet and in peace with the other ships, even with the warships of other belligerents.

ART. 27th—The Brazilian military, naval, fiscal and police authorities will exercise the greatest care to prevent the violation of the aforesaid measures in the territorial waters of the Republic.

Department of State for Foreign Relations, Rio de Janeiro, August 4th, 1914.

FREDERICO AFFONSO DE CARVALHO.

DECREE NO. 11,141 OF SEPTEMBER 9th, 1914, COMPLETING THE RULES OF NEUTRALITY APPROVED BY DECREE NO. 11,037 OF AUGUST 4th, ABROGATES THE LAST PART OF THE 22ND ARTICLE OF THE SAME DECREE

The President of the Republic of the United States of Brazil

Resolves to incorporate into the Decree No. 11,037 of the 4th of August ultimo the following rules:

ART. 1st—No merchant ship will be allowed to sail from a Brazilian port without a previous declaration from the consular agent of her nation, stating the ports of call and destination of said ship, with an assurance that she is employed only on commercial business.

ART. 2nd—In case it will be known, by the length of her voyage or the route of her sailing, that a ship sailing from a Brazilian port went to other ports than those declared in her statement, and she returns to Brazil, she will be detained by the Brazilian naval authorities to be considered as belonging to the fleet of war of her nation and as such submitted to the dispositions of Article 19th of the Decree No. 11,037 of August 4, 1914.

ART. 3rd—Abrogates the last clause of Article 22nd of the rules approved by Decree No. 11,037 of the 4th of August, 1914.

Rio de Janeiro, September 9th, 1914.

HERMES DA FONSECA.

LAURO MÜLLER.